



FROM COUNSEL

A Preventive Law Service of The Office of The Judge Advocate General
Keeping You Informed On Personal Legal Affairs

Premarital Agreements

Have you been married and divorced before? Do you have children from that former marriage? Were you satisfied with the property distribution when that marriage ended?

If you answered Yes to any of those questions, you may desire a premarital agreement to protect your children from that earlier marriage from being disinherited - unintentionally or otherwise.

Here are some Questions & Answers about Premarital Agreements to help you decide if you need one before you (re)marry.

Q. What is a premarital agreement?

A. It is a contract you enter with your prospective spouse **before** you marry. In it you describe what each party's rights will be in the event you divorce or when one of you dies. Frequently, a premarital agreement discloses both parties' assets, indicates who is entitled to what property, and how much support, if any, will be paid in the event of divorce.

Q. Why have a premarital agreement?

A. To achieve certainty (as much as possible) just in case this marriage ends in divorce (like your previous one?). A premarital agreement states both parties' expectations and desires. It gives piece of mind - protection of certain assets, property, money, that one party brings to the marriage. It helps that party avoid the risk of a major loss of that asset upon divorce. For someone remarrying, a premarital agreement allows you to ensure that your assets pass to your children from your prior marriage without claim by your new spouse. Once you remarry, you will probably make a will that says your children are to inherit your property. That may not mean that that property will pass to those children, however. If your new spouse survives you, your spouse may claim property from your estate. Almost every state has a law that allows a surviving spouse to claim a portion of the estate (usually one-third to one-half) regardless of what your will says unless your spouse waives that right in a valid agreement. One solution: use a Qualified Terminal Interest Property (QTIP) Trust in your will. It allows your surviving spouse to use the property during his/her life, but the property passes to your children when the spouse dies.

Q. What does a premarital agreement usually cover?

A. It depends on the parties, however, typically it includes many of these topics:

- Prior marital history, and family circumstances,
- What property and prospects each spouse brings to the marriage,
- Who will own the investment earnings from such property,
- What happens with the earnings of each spouse,
- What happens with property one spouse may inherit,
- What happens in the event of death of a spouse,
- Where the couple will reside, and
- How taxes will be handled (e.g., joint or separate returns),
- The level of support in the event of a divorce, and
- What happens to debts owed before the marriage and those thereafter incurred.

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Where either party is marrying for a second or third time, there is usually a provision stating that certain assets pass to a child of a previous marriage rather than to the new spouse.

Q. If I want to enter a premarital agreement before I marry, what should I do?

A. As a first step, you and your future spouse should prepare a list of your own property (e.g., inventory your assets) and finances (e.g., bank accounts, investment accounts)—as well as your debts—before your wedding day. Share the information with one another and each of you sign the inventory. Then, at the very least, keep your own property owned before your marriage separate and don't combine it with the marital property or the other's property. You can help preserve its separateness by keeping it in your own name (e.g., title your car in your name only). When you sell or liquidate any of it, deposit the proceeds in a separate account in your own name and do not deposit any marital funds into that account or use that account for the benefit of the marriage. If you decide to use some of your funds for a common purpose and invest, that money transforms from separate to *marital* property - with both of you being entitled to it. In addition to making a complete written disclosure of each others' assets and liabilities, ensure that the premarital agreement terms are not unreasonable, and give both parties a reasonable opportunity to review it with his and her own independent legal counsel before the wedding.

Q. What are the key terms I need for an enforceable agreement?

A. These vary by state, however, it must:

- be in writing,
- be signed by you and your intended spouse,
- be accompanied by sufficient disclosure of all the assets, income and debt of you and your intended spouse,
- have allowed the you and your intended spouse ample opportunity to consider its contents so each of you understand its intended effect and its consequences, and obtain separate legal advice, before signing,
- be free from fraud, duress, and
- be entered freely and voluntarily.

Q. Can a premarital agreement affect community property?

A. Probably, if it satisfies the state's requirements. In a "premarital," the prospective spouses may agree on their rights to the property that they bring into the marriage, and/or acquire during the marriage. They may also agree as to the amount of support owed to the other in the event of divorce, and their respective inheritance rights.

Q. Where can I find more information about premarital agreements?

A. Several Internet Sites offer information. Visit one or more of these to learn more:

US Law.com: http://www.uslaw.com/problem.tcl?problem_id=180.

The Law.com: <http://www.thelaw.com/research/article/1,1108,MTlgNTMgNjEgMjg0,00.html>.

FreeAdvice.com: <http://www.freeadvice.com/law/546us.htm>.

Q. Where can I go for help in preparing a premarital agreement?

A. Visit us, **your** legal assistance office. If we can't prepare one for you, we will refer you to a local attorney who specializes in preparing premarital agreements.

FROM COUNSEL is distributed by the U.S. Army Garrison -Miami, Legal Assistance Office, located at 8300 NW 33rd Street, Miami, Florida, Suite 110, Room 33. You may call us for an appointment at 305-437-1307. Check out our Legal Service web site at www.jagcnet.army.mil/Vegal for other helpful information on similar personal legal affairs topics.